

1 December 2016

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Addendum to the BSB's Consultation paper "The Future of Training for the Bar: Future Routes to Authorisation"

As part of our current consultation concerning the Future of Bar Training, and at the request of the Council of the Inns of Court (COIC) and the Bar Council, we now attach a paper from them which includes further detail of the proposal which Derek Wood QC presented at our seminar on 7 July this year.

In their paper, COIC and the Bar Council have included their view as to how their proposal might be assessed against our criteria of flexibility, accessibility, affordability and sustaining high standards. We now invite you to offer your own assessment of their proposal against those criteria.

We welcome the COIC and Bar Council proposal. As we have already made clear, we will also welcome other proposals if you wish to suggest an option for the future of Bar training which you feel is not included within our current options.

In order to ensure that everyone has a chance to consider the COIC and Bar Council proposal fully, along with the other options set out in our consultation paper of 3 October, we are extending the deadline for comments on our consultation to 31 January 2017.



The Council
of the Inns
of Court

ADDENDUM

To the BSB's Consultation paper "The future of training for the Bar: Future routes to Authorisation" October 2016

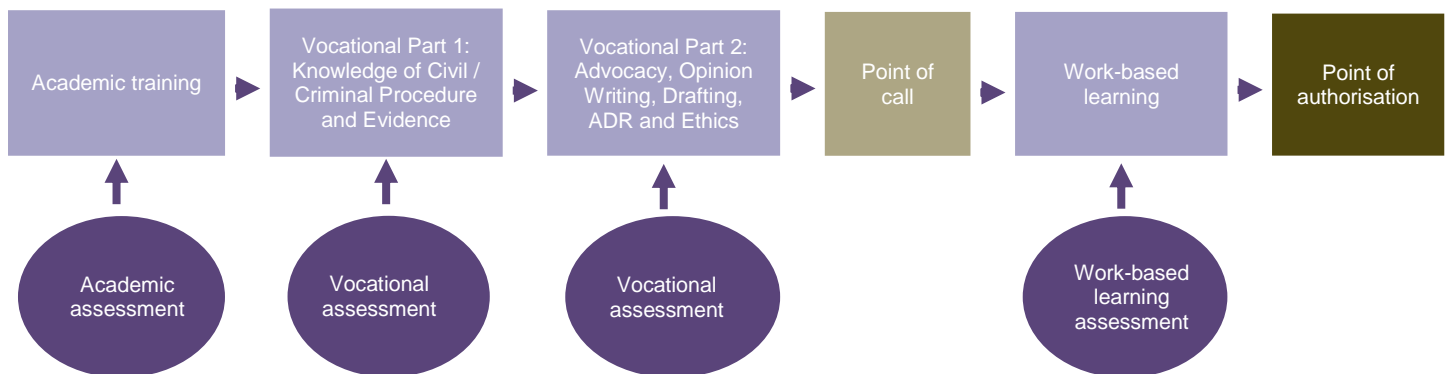
The Council of the Inns of Court & Bar Council

1. This is an Addendum to the above Consultation Paper ('the 2016 Consultation Paper'). In the 2016 Consultation Paper the BSB invited responses to a number of proposals and options presented for consideration in connection with the future educational and training requirements to be fulfilled by prospective candidates for call to the Bar and practice as a barrister, and the routes and methods by which those requirements could be met.
2. The 2016 Consultation Paper was a sequel to an earlier Consultation Paper on the same subject published in May 2015 ('the 2015 Consultation Paper'). The BSB had received a significant number of responses to the 2015 Consultation Paper. The 2016 Consultation Paper contains proposals and options, offered for further public comment, which were formulated by the BSB in the light of the responses received to the 2015 Consultation Paper.
3. This Addendum supplements Part III of the 2016 Consultation Paper. Central to the BSB's concerns relating to the vocational stages of a barrister's training was the requirement that future arrangements, including the arrangements for the delivery of the Bar Professional Training Course ('the BPTC'), should satisfy certain basic regulatory criteria: flexibility, accessibility, affordability and sustaining high standards.
4. Set against these criteria, Part III offers for consideration a number of Options, which include future reform of the BPTC. They are designated Options A, B (i)-(iv) and C. These are fully described in the 2016 Consultation Paper.
5. In their responses to the 2015 Consultation Paper the Council of the Inns of Court and the Bar Council had suggested another model for the BPTC which was not offered as an Option in Part III of the 2016 Consultation Paper. For convenience this model is now called 'the COIC/

Bar Council Proposal'. Respondents are now invited to comment on the COIC/ Bar Council Proposal, and the BSB is extending the date for the submission of responses to the 2016 Consultation Paper to 31 January 2017.

The COIC/Bar Council Proposal

6. The COIC/Bar Council Proposal is illustrated below.



7. In summary the COIC/Bar Council Proposal adopts the present three-stages of qualification for authorisation to practise: (1) the possession of a university degree, which will be either a Qualifying Law Degree or another degree followed by the Graduate Diploma in Law; (2) successful completion of the BPTC; and (3) successful completion of 12 months' pupillage. It also accepts that entry upon stage (2) should be conditional on passing the BCAT.
8. The BPTC, as it is delivered at present, is a unified 30-week course (full-time or studied part-time for an equivalent period) undertaken on-site with an authorised provider. The special feature of the COIC/ Bar Council Proposal is that, in contrast to the present system, it splits the existing syllabus of the BPTC into two Parts: Part 1 and Part 2.

Part 1 will consist of the knowledge-based parts of the course, namely Civil and Criminal Procedure and Evidence. These subjects are currently, and will continue to be, centrally examined by the BSB. Candidates will be entitled to prepare separately for Part 1 by any method they think fit or can afford, including by private study, having the choice but without the requirement of attendance at any particular provider's course.

Part 2 will consist of the remaining skills-based elements of the BPTC, including advocacy, drafting in all its forms and ethics, and conferencing skills, which will require formal attendance as at present. Progress to Part 2 will be conditional on passing Part 1.

The case for the COIC/ Bar Council Proposal

9. COIC and the Bar Council submitted that the BSB should adopt the COIC/ Bar Council Proposal for a number of reasons embedded in the BSB's own underlying regulatory concerns.
10. Affordability. The present fees for full-time attendance on the BPTC with one of the authorised providers range from about £15,000 to £19,000. To the amount of the fees students must add the ordinary costs of living – accommodation, food and travel. Many will already be burdened by pre-existing debt incurred as university students, which can amount to some £40,000.
11. Some students are able to offset some of this expense by receiving a scholarship from their Inn of Court; but overall the economic cost of qualifying for the Bar inevitably deters many able but economically less-well-off students from even considering such a career. The Inns and the Bar Council have a genuine fear, based on their direct contacts with school-leavers, university students and the Inns' own student members, that the Bar is becoming a profession for the social 'haves' which excludes the 'have nots.'
12. Risk. The high cost of qualifying is exacerbated by the high risk of failure. It is a matter of concern that the BPTC is associated with a high failure rate which is exceptional for a post-graduate training courses. The BSB's 'BPTC Key Statistics 2016' report shows that of the 2012/13 students, 30 months after completing the taught course, 15% had failed and 7% had exams outstanding. Cohorts in the following years show similar failure rates. It would appear that too many students are accepted on the course who struggle with its requirements, and their presence on the course may also have a detrimental effect on the progress of their co-students in the classroom.
13. Moreover, even for those who pass, entry to the next stage of qualification, namely pupillage, is attended with great uncertainty. The self-employed and employed Bar, based on their perception of the demands from clients for their services, appoint just over 400 pupils a year. Using statistics published by the BSB, COIC and the Bar Council estimate that the prospects of a successful BPTC candidate who passes at the basic level ('Competent') of obtaining a pupillage are 1 in 20. (The same is true of candidates possessing a 2.2 class degree). The

prospects of candidates assessed as 'Very Competent' or 'Outstanding' are quite significantly better.

14. Mitigation of the cost/risk ratio. COIC and the Bar Council submitted that by splitting the BPTC into these two constituent Parts the BSB would travel some distance along the path of solving these associated problems.
 - (1) If the BPTC were to be split into two Parts, the overall economic cost to students would be significantly reduced. It may be anticipated that the cost of studying Part 1 by, for example, private study, followed by the fees and other costs such as accommodation incurred in attendance on Part 2 would be much less than the total fees and costs currently incurred by compulsory attendance, with accommodation, on the present integrated 30-week course.
 - (2) Part 1 would act as an effective early signal to some candidates, before they incurred greater fees and expenses that they would be likely to struggle to pass the entire course.
 - (3) Candidates, even if they passed Part 1, would have the opportunity to review their career choice at that stage, perhaps having researched more thoroughly the market for pupillage, or considered their own inclinations and abilities, before committing themselves to the next and more expensive stage in the training. If it appeared, for example, that they were unlikely to achieve a high grade, they would be able to re-assess their position at that point.
 - (4) Providers of Part 2 would be able to concentrate on a cohort of students who had the comfort and confidence of knowing that they had already attained the standards set by the BSB in a key part of the course.

15. Accessibility The separation of Part 1 from Part 2 would make the first part of the BPTC accessible to a wider range of students, who would not be bound to study in any particular location. They could prepare, in effect, anywhere in the world. This would be particularly attractive to students who might need to study at home for economic or other reasons, such as caring responsibilities.

16. Flexibility The different ways in which students could prepare for Part 1 would enable them to adapt their mode of study according to their circumstances and what they felt would be the most effective method of preparation for them as individuals. Inevitably some students, who could afford the expense, would opt to attend a formal course which would

provide both Parts of the BPTC, possibly enhanced by a period of extra study leading to a Master's degree. The COIC/ Bar Council proposal does not exclude that choice, which might be particularly attractive to international students. But it does not drive all students down the same channel; and it is equally foreseeable that some students, including those of high ability from all backgrounds, will have the aptitude and desire to prepare for Part 1 as independent agents.

17. Innovation in teaching and learning The COIC/ Bar Council Proposal has the capacity to promote the development of new materials and techniques in the delivery of Part 1 and Part 2 of the BPTC. It also recognises the different approaches which students now take towards learning. At the same time, so far as course content is concerned, it does not disrupt the present core syllabus, but is firmly based upon it.
18. Educational advantages. There are at least four advantages in studying the elements of Civil Litigation, Evidence and Remedies, and Criminal Litigation, Evidence and Sentencing, as a whole, before embarking upon the skills-based course, where they are applied in practical exercises. First, the whole litigation process is mapped out for the student in advance. Secondly, what has been learnt in Part 1 will be more effectively embedded and reinforced during the Part 2 skills exercises. Thirdly, the students, all of whom are university graduates, can choose a method of study which suits their own style of learning. Fourthly, during Part 2 students will be able to concentrate on the acquisition of skills without the simultaneous distraction of facing the prospect of future assessments on the knowledge-based part of the course.
19. Sustaining high standards. COIC and the Bar Council do not envisage any slackening of the standards of assessment currently in force in respect of either Part of the split syllabus. Everyone will be judged by the same standards, irrespective of the route they have followed to the several parts of the examination. It may however be expected that the early elimination of candidates with poor prospects will have some beneficial effect on the teaching and learning in Part 2.
20. COIC and the Bar Council recognise that some providers with low success rates or low attendance may find it uneconomic to continue offering the old style BPTC if students are attracted by the COIC/ Bar Council Proposal. The remedy, should this happen, is not for students to continue effectively to subsidise such providers, but rather for those providers

to innovate by offering high quality skills courses. Although this is for the market to decide, we challenge the assumption that our proposals may have the effect that regional providers will stop offering the Bar course, and training will become London-centric. While some students may indeed desert old-style courses in favour of new-style courses, that should open up a valuable opportunity for providers to offer two skills courses each year.

Alternative approaches

21. The COIC/Bar Council Proposal could be deployed in two different ways:
 - First, the BSB could prescribe this as the exclusive route to the extent that they would require all BPTC students, however they are studying and preparing for Part 1, to take and pass Part 1 before they are permitted to embark on Part 2, being the skills-based part of the course.
 - Secondly and alternatively it could open up the COIC/ Bar Council Proposal as one permitted pathway while allowing other students to attend the integrated course exemplified by Options A/B (i), for example, reformed as suggested.
22. Respondents are invited to offer their views on each of these alternatives.